

## REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: December 30, 2005

ANALYST: Jodi Winship

- I. COMMITTEE: Georgia Medical Political Action Committee  
(C00001685)  
Roy Vandiver, MD, Treasurer  
1330 W Peachtree Street, NW #500  
Atlanta, GA 30309
- II. RELEVANT STATUTES: 2 U.S.C. §432(b)(3)  
2 U.S.C. §432(c)(5)  
2 U.S.C. §432(h)(1)  
2 U.S.C. §434(b)(4)(H)(v)  
2 U.S.C. §434(b)(6)(B)(v)  
2 U.S.C. §439a(b)

## III. BACKGROUND:

**Other Violations of the Federal Election Campaign Act (Unauthorized Receipt and Disbursement of Committee funds)**

On October 4, 2005, Rob Kelner, the attorney for Georgia Medical Political Action Committee ("the Committee"), called the Reports Analysis Division's (RAD) analyst assigned to the Committee to discuss the embezzlement of Committee funds. Mr. Kelner advised the Analyst that a Committee employee apparently had diverted Committee funds into a bank account known only to the employee<sup>1</sup>. He stated that an audit was in progress to determine the exact amount of the embezzlement, but the initial estimate was approximately \$80,000 in federal and non-federal funds. He related to the Analyst that once the audit was concluded he would call to set up a meeting to discuss this financial activity should be reported (Attachment 2).

On October 26, 2005, the Analyst called Mr. Kelner regarding a Request for Additional Information (RAI) that questioned a cash-on-hand discrepancy on the 2005 Mid-Year Report (Image 25038894616) which was referable to the Office of General Counsel (OGC).<sup>2</sup> During the call, the Analyst inquired about the status of the audit discussed on October 4, 2005. Mr. Kelner

<sup>1</sup> Mr. Kelner stated that the FBI had also been apprised of the situation

<sup>2</sup> The Committee adequately responded to this issue on November 22, 2005, via a miscellaneous electronic submission (Image 25971547515), thereby canceling the referral to OGC.

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responded that the audit was taking longer than planned due to the bank's difficulty in locating some of the checks. Mr. Kelner, also, inquired about the best way to report the embezzlement activity. The Analyst advised him that more information about the activity would have to be provided before the Analyst could offer reporting advice (Attachment 2).

On November 1, 2005, Mr. Kelner called the Analyst to set a meeting date and time as the audit was nearing completion. He said that one new issue that needed to be discussed at the meeting was how to handle the claim check issued by the insurance company to reimburse the Committee for the embezzled funds. Specifically, he wanted to know whether the check could be deposited into the Committee's federal account. He stated that the embezzled funds intended for the federal account were federally permissible and that they hadn't been disclosed on the Committee's FEC reports. He also asked about the necessity of disclosing the receipts on amended reports or whether a detailed miscellaneous text submission would suffice. He stated that he still wasn't sure how long the embezzlement had been going on but that he would find out before the meeting. The Analyst advised Mr. Kelner that she would need to do more research on the subject before giving advice, although it seemed like the insurance check could be deposited into the federal account as long as the Committee also disclosed the federal receipts that were diverted. The Analyst also reminded him that if the insurance check included reimbursement for non-federal funds, that amount would need to be immediately transferred out of the federal account (Attachment 2).

On November 7, 2005, Rob Kelner and Keith Davis, the Committee's auditor, met with the RAD analyst and Andrew Dodson, RAD Assistant Branch Chief. Mr. Kelner stated that the audit uncovered \$24,700 in federal receipts that had been diverted from the Committee's federal account between November 2003 and March 2005. Mr. Kelner explained that the diversion was possible because the employee had the authority to open accounts on behalf of the Committee and the Committee's Sponsor (Georgia Medical Association) and was also responsible for receiving all Committee and Association checks. Therefore, the employee was able to divert the funds into a new account opened for this purpose. The embezzlement was uncovered during a routine audit. Mr. Kelner was advised that informal advice from OGC concerning the legality of depositing the insurance check into the federal account was pending and that he would be contacted once guidance was received. The Analyst also recommended that the Committee amend its reports to show as memo entries, the diverted receipts that were intended for the federal account. Mr. Kelner expressed concern that disclosing those entries would result in a mis-reporting of receipts, but the Analyst explained that memo entries are not added into the line totals and would not affect the cash-on-hand balance. It was also recommended that the Committee include a miscellaneous text submission to explain the embezzlement situation. Mr. Kelner estimated that it would take approximately two months to complete the amendments (Attachment 2).

On November 11, 2005, the Analyst called Mr. Kelner to advise him that the Committee should report the diverted receipts as regular receipts (rather than as memo entries as was previously recommended) and to report disbursements to the individual for the funds embezzled. Mr. Kelner was also informed that the Committee could deposit the insurance check into the federal account and that it should be reported on Line 17 (Other Federal Receipts). Mr. Kelner advised the Analyst that he was very uncomfortable with this reporting scenario because he did not think it accurately portrayed the activity. He believed it would be misleading to show disbursements to this employee because the Committee did not actually "disburse" the funds, rather they were stolen. The Analyst explained that if the employee was authorized to open bank accounts on behalf of the Committee, then technically the receipts *were* received by the

Committee in a Committee account. Mr. Kelner reiterated that he was not comfortable advising the Committee to report the activity in this manner and that he felt reporting the receipts as memo entries and not showing any disbursements would more accurately reflect the activity. The Analyst informed Mr. Kelner that this was the advice being provided and that OGC was aware of the Committee's situation and concerns discussed in the meeting. Mr. Kelner asked for this advice to be in writing and to be able to speak with an attorney from OGC; however, the Analyst did not know if this was possible and stated she would call him back (Attachment 2).

On November 15, 2005, the Analyst returned a call from Mr. Kelner. Mr. Kelner said that he had looked over the reports of other committees that had experienced embezzlement situations and saw that these committees reported the embezzled funds as receipts and disbursements, so he felt more comfortable telling his Committee to report the activity in the same manner. He asked for further clarification on how to report the disbursements. After consultation with the Party Non-Party Branch Chief, the Analyst advised Mr. Kelner that the Committee should report the disbursements on the dates that the employee withdrew funds from the diversion account. Mr. Kelner explained that this would be difficult because the employee diverted federal, non-federal and Association funds so it was not possible to determine which funds were being withdrawn at what time. The Analyst recommended that the Committee disclose all withdrawals up until the point that they totaled the federal amount embezzled. Mr. Kelner said he was still concerned about reporting it this way because he felt that it would appear that the disbursements were authorized or came out of the federal account. He said that he would prefer to report the disbursements on the same date and for the same amount as reported for each receipt that was diverted so that the reports disclose the money coming in and going out of the account at the same time, thus more accurately reflecting the diversion of funds. The Analyst stated that regardless of whether he takes the advice or not, he should be sure to include a miscellaneous text submission to explain the situation and how they are reporting it (Attachment 2).

On December 19, 2005, Mr. Kelner called the Analyst to advise that the insurance check for the embezzlement was written to and deposited into the Georgia Medical Association Account. The Association then transferred the Committee's share into the federal account. The Analyst advised Mr. Kelner to specify all applicable information on the required reports.

On December 21, 2005, Mr. Kelner called the Analyst to state, among other matters, that all required amendments concerning the embezzlement situation would be electronically uploaded within the next day or two.

To date, no further communication has been received from the Committee regarding this matter.

GEORGIA MEDICAL POLITICAL ACTION COMMITTEE

ROY VANDIVER MD

FILING FREQUENCY: QUARTERLY

1330 W PEACHTREE ST NW #500

ATLANTA

NON-PARTY QUALIFIED  
GA 30309

ID #C00001685

FORM TYPE	RPT TYPE	AI	PGI	REC DATE	PGS	BEG IMAGE	COVERAGE DATES	BEG CASH	RECEIPTS	DISBURSE	END CASH	DEBTS BY
MS			T	1/03/2003	1	23990022053						
RQ	30G	7		12/17/2004	2	24038671417	10/01/2004 10/12/2004					
RQ	TER	2		2/11/2004	3	24038320188	7/01/2003 1/23/2004					
3	MY	N	P	7/22/2003	151	23991541019	1/01/2003 6/30/2003	514768	115580	65068	565280	0
3	Q1	N	P	4/14/2004	11	24990992183	1/24/2004 3/31/2004	678835	4095	1583	681347	0
	Q2	N	P	7/15/2004	26	24961832908	4/01/2004 6/30/2004	681347	14684	3778	692253	0
	Q3	N	P	10/08/2004	22	24962391076	7/01/2004 9/30/2004	692253	13110	2928	702435	0
	30G	N	P	12/02/2004	7	24981505083	10/13/2004 11/22/2004	702435	2	5729	696708	0
	30G	A	P	12/27/2004	7	24981910963	10/01/2004 11/22/2004	702435	2	5729	696708	0
	YE	N	P	1/26/2005	6	25970010231	11/23/2004 12/31/2004	696708	5	2420	694292	0
	TER	T	P	1/23/2004	180	24990142522	7/01/2003 1/23/2004	565280	148877	35322	678835	0
							TOTAL		296353	116828		

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MS			T	11/22/2005	1	25971547515						
RQ	MY	2		9/21/2005	3	25038894616	1/01/2005 6/30/2005					
3	MY	N	P	7/27/2005	38	25970781771	1/01/2005 6/30/2005	37618	26515	5219	58913	0
TOTAL									26515	5219		

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